

ESTTA Tracking number: **ESTTA217316**

Filing date: **06/12/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Roche Diagnostics GmbH
Granted to Date of previous extension	07/23/2008
Address	Sandhofer Strasse 116 Mannheim, 68305 GERMANY

Name	Roche Diagnostics Operations, Inc.
Granted to Date of previous extension	07/23/2008
Address	9115 Hague Road Indianapolis, IN 46250 UNITED STATES

Attorney information	Jennifer L. Day Bose McKinney & Evans LLP 135 N. Pennsylvania Street Suite 2700 Indianapolis, IN 46204 UNITED STATES trademark@boselaw.com Phone:(317) 684-5362
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Applicant Information

Application No	77012870	Publication date	03/25/2008
Opposition Filing Date	06/12/2008	Opposition Period Ends	07/23/2008
Applicant	Taidoc Technology Corporation 4F, No.88, Sec.1, Kwang-Fu Rd., San-Chung Taipei County, 222 TAIWAN		

Goods/Services Affected by Opposition

Class 005. Opposed goods and services in the class: Medical diagnostic test strips for use in the field of measuring of blood glucose
Class 010. Opposed goods and services in the class: Apparatus for blood analysis; Apparatus for clinical diagnosis; Blood glucose meter; Blood testing apparatus

Applicant Information

Application No	77217457	Publication date	05/13/2008
Opposition Filing Date	06/12/2008	Opposition Period Ends	06/12/2008
Applicant	Taidoc Technology Corporation 4F, No.88, Sec.1, Kwang-Fu Rd., San-Chung Taipei County, 222 TAIWAN		

Goods/Services Affected by Opposition

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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1277867	Application Date	12/10/1981
Registration Date	05/15/1984	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1981/11/09 First Use In Commerce: 1981/11/09 a Blood Glucose Monitor		

U.S. Registration No.	2403536	Application Date	04/22/1999
Registration Date	11/14/2000	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1998/04/01 First Use In Commerce: 1998/04/01 diagnostic test strips for determining the level of glucose in blood for medical and clinical use; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips for medical and clinical use Class 010. First use: First Use: 1998/04/01 First Use In Commerce: 1998/04/01 blood glucose monitors, lancets and a blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions		

U.S. Registration No.	2628696	Application Date	09/03/1999
Registration Date	10/01/2002	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK COMPACT		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2001/10/08 First Use In Commerce: 2001/10/08 blood glucose test strips for medical use; and control solutions for testing the accuracy of a blood glucose monitor for medical and clinical use</p> <p>Class 010. First use: First Use: 2001/10/08 First Use In Commerce: 2001/10/08 blood glucose monitors, and blood glucose monitoring devices, namely a kit consisting of a blood glucose monitor, glucose test strips, lancets and control solutions for blood glucose monitoring</p>		

U.S. Registration No.	2651417	Application Date	05/08/2001
Registration Date	11/19/2002	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: In-vitro diagnostic agents for medical use; and chemical reagents for the verification of diagnostic findings for medical use</p> <p>Class 009. First use: Computer hardware and computer software for evaluation, verification and administration of medical data</p> <p>Class 010. First use: Computer hardware sold as a component of blood glucose monitors and computer software for use in operating such apparatus; electronic data management systems comprised of chemical analyzers, personal computers, electronic diaries, interfaces, modems and cables for clinical medical use; surgical and medical instruments, equipment and apparatus, namely, blood glucose monitors</p> <p>Class 041. First use: Education and teaching, namely, providing classes, workshops and seminars in the field of diabetes management, publication of printed products, namely books, brochures, leaflets, and journals related to the field of diabetes for professionals and patients</p> <p>Class 042. First use: Computer programming in the medical field for others; and services related to the field of diabetes for professionals and patients, namely medical consultation, documentation in the nature of maintaining files and records concerning the medical condition of individuals, weight reduction diet planning and supervision, and providing information about diabetes via a website on the Internet</p>		

U.S. Registration No.	2681644	Application Date	06/14/2000
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Registration Date	01/28/2003	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK COMPASS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2001/03/16 First Use In Commerce: 2001/03/16 computer software for maintaining a database of blood test results from a blood glucose monitor for use by individuals with diabetes		

U.S. Registration No.	2703048	Application Date	12/11/2000
Registration Date	04/01/2003	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK ACTIVE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/08/08 First Use In Commerce: 2001/08/08 diagnostic test strips for determining levels of glucose in blood; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips, all sold over-the-counter to consumers for medical diagnostic use Class 010. First use: First Use: 2001/08/08 First Use In Commerce: 2001/08/08 blood glucose monitor; and a blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions, all sold over-the-counter to consumers for medical diagnostics		

U.S. Registration No.	2732629	Application Date	06/27/2000
Registration Date	07/01/2003	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK INFORM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2001/04/30 First Use In Commerce: 2001/04/30 blood glucose monitor with data management capabilities		

U.S. Registration No.	3016330	Application Date	05/06/2004
Registration Date	11/15/2005	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2004/11/01 First Use In Commerce: 2004/11/01 Online retail store services, featuring products for use in diabetes management; administration of a discount and rebate program for enabling participants to obtain discounts and rebates on products for use in diabetes management		

U.S. Registration No.	3071846	Application Date	12/19/2003
Registration Date	03/21/2006	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK AVIVA		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2005/01/20 First Use In Commerce: 2005/07/15 Diagnostic test strips for determining levels of glucose in blood; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips all for medical diagnostic use</p> <p>Class 010. First use: First Use: 2005/01/20 First Use In Commerce: 2005/07/15 Blood glucose monitors; and blood glucose monitoring kits consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions all for medical diagnostic use</p>		

U.S. Registration No.	3076905	Application Date	08/27/2004
Registration Date	04/04/2006	Foreign Priority Date	04/02/2004
Word Mark	ACCU-CHEK		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 010. First use: Instruments, devices and apparatus for medical, surgical and veterinary purposes, namely, blood glucose meters, disposable infusion sets, lancets and insulin pumps and accessories therefor, namely, catheters, pen needles, syringes and patches</p> <p>Class 044. First use: Medical services in the field of diabetes; health care consultancy in the field of diabetes</p>		

U.S. Registration No.	3127170	Application Date	10/27/2004
Registration Date	08/08/2006	Foreign Priority Date	04/30/2004
Word Mark	ACCU-CHEK MULTICLIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 010. First use: Lancet devices and lancets for obtaining blood</p>		

U.S. Registration No.	3194287	Application Date	08/27/2004
Registration Date	01/02/2007	Foreign Priority Date	07/13/2004
Word Mark	ACCU-CHEK SPIRIT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 010. First use: Insulin pumps and accessories thereof, namely, catheters, infusion sets and tubing, pen needles, syringes, adapters, ampoules, batteries, filling devices used for filling ampoules for insulin pumps with insulin, sterile dressings and carrying cases

U.S. Registration No.	3199675	Application Date	04/25/2005
Registration Date	01/16/2007	Foreign Priority Date	NONE
Word Mark	ACCU-CHEK TENDER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2005/07/26 First Use In Commerce: 2005/07/26 medical instruments and apparatuses, namely, catheters and infusion sets and accessories thereof, namely, adapters and ampoules, all for the subcutaneous administration of drugs		

U.S. Registration No.	3202402	Application Date	09/09/2005
Registration Date	01/23/2007	Foreign Priority Date	03/15/2005
Word Mark	ACCU-CHEK LINKASSIST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 010. First use: Medical instruments, namely, insertion tools for the insertion of needles and infusion sets all for the subcutaneous administration of insulin		

U.S. Registration No.	3223375	Application Date	04/06/2006
Registration Date	03/27/2007	Foreign Priority Date	10/12/2005
Word Mark	ACCU-CHEK PERFORMA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: Diagnostic test strips for determining the levels of glucose in blood; control solutions used for quality checks on blood glucose monitors and diagnostic test strips, all for use by individuals with diabetes for medical diagnostic purposes and for use by hospitals Class 010. First use: Blood glucose monitors, blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions, all for use by individuals with diabetes for medical diagnostic purposes and for use by		

	hospitals		
U.S. Registration No.	3256740	Application Date	08/16/2006
Registration Date	06/26/2007	Foreign Priority Date	02/16/2006
Word Mark	ACCU-CHEK 360°		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: Computer hardware and computer software for evaluation, verification and administration, of medical data; computer software for medical and diagnostic purposes, namely, for use in transferring data from blood glucose monitors or insulin pumps to electronic data management systems such as personal computers, electronic diaries, interfaces, modems and cables for clinical medical use		
U.S. Registration No.	3348704	Application Date	12/14/2005
Registration Date	12/04/2007	Foreign Priority Date	06/17/2005
Word Mark	ACCU-CHEK CONNECT U		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: educational services, namely, on-line workshops, on-line seminars and on-line classes relating to health and medical information about monitoring diabetes, management of diabetes and use of meter devices, insulin pumps and accessories for use therefor		
U.S. Registration No.	3411797	Application Date	12/02/2005
Registration Date	04/15/2008	Foreign Priority Date	06/07/2005
Word Mark	ACCU-CHEK SMART PIX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: Electronic apparatus for recording, transmission and presentation of medical data, namely, electronic readers for blood glucose meters and insulin pumps; software for medical purposes, namely, for formatting, viewing and transmitting medical data collected and stored on blood glucose meters and insulin pumps to a personal computer and vice versa		
Attachments	75688347#TMSN.gif (1 page)(bytes) 75792547#TMSN.gif (1 page)(bytes) 76254845#TMSN.gif (1 page)(bytes) 76070019#TMSN.gif (1 page)(bytes)		

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer L. Day/
Name	Jennifer L. Day
Date	06/12/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Roche Diagnostics GmbH and)	
Roche Diagnostics Operations, Inc.,)	
)	Opposition No. _____
Opposers,)	
)	
v.)	Application Serial No. 77/012870 and
)	Application Serial No. 77/217457
Taidoc Technology Corporation,)	
)	
Applicant.)	

CONSOLIDATED NOTICE OF OPPOSITION

In the matter of Taidoc Technology Corporation's ("Applicant") application for registration of the trademark **CLEVER CHEK MASTER YOUR LIFE** (Application Serial No. 77/012870, filed on October 3, 2006, and published on March 25, 2008) and **CLEVER CHEK AUTO-CODE** (Application Serial No. 77/217457, filed on June 27, 2007, and published on May 13, 2008).

Roche Diagnostics GmbH ("RDG") and Roche Diagnostics Operations, Inc. ("RDOI") (collectively referred to herein as "Opposers") believe that they will be damaged by registration of the marks shown in said Application Serial No. 77/012870 and Application Serial No. 77/217457 (collectively, the "**CLEVER CHEK** marks"), and hereby file this Consolidated Notice of Opposition, pursuant to CFR § 2.104(b), to oppose same.

As grounds for opposition, it is alleged that:

1. Since before October 3, 2006, the earlier filing date for Applicant's **CLEVER CHEK MASTER YOUR LIFE** trademark application, Opposers have been continuously using in commerce several **ACCU-CHEK** marks to identify medical instruments and apparatus, and

other products and services related to blood glucose monitoring and diabetes management and education. Opposers use these marks throughout the United States in connection with the products and services listed below.

2. RDG owns U.S. registrations for and RDOI is an authorized licensee for the following marks, in addition to other **ACCU-CHEK** marks:

- a) **ACCU-CHEK** (Reg. No. 1,277,867, issued May 15, 1984) for a blood glucose monitor in Class 10. First use date is November 9, 1981. This registration is incontestable.
- b) **ACCU-CHEK** (Reg. No. 2,403,536, issued November 14, 2000) for diagnostic test strips for determining the level of glucose in blood for medical and clinical use; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips for medical and clinical use in Class 5; blood glucose monitors, lancets and a blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions in Class 10. First use date is April 1, 1998. This registration is incontestable.
- c) **ACCU-CHEK COMPACT** (Reg. No. 2,628,696, issued October 1, 2002) for blood glucose test strips for medical use; and control solutions for testing the accuracy of a blood glucose monitor for medical and clinical use in Class 5; and blood glucose monitors, and blood glucose monitoring devices, namely a kit consisting of a blood glucose monitor, glucose test strips, lancets and control solutions for blood glucose monitoring in Class 10. First use date is October 8, 2001. This registration is incontestable.

- d) **ACCU-CHEK** (Reg. No. 2,651,417, issued November 19, 2002) for in-vitro diagnostic agents for medical use; and chemical reagents for the verification of diagnostic findings for medical use in Class 5; computer hardware and computer software for evaluation, verification and administration of medical data in Class 9; computer hardware sold as a component of blood glucose monitors and computer software for use in operating such apparatus; education and teaching, namely, providing classes, workshops and seminars in the field of diabetes management, publication of printed products, namely books, brochures, leaflets, and journals related to the field of diabetes for professionals and patients in Class 41; and electronic data management systems comprised of chemical analyzers, personal computers, electronic diaries, interfaces, modems and cables for clinical medical use; surgical and medical instruments, equipment and apparatus, namely, blood glucose monitors in Class 42.
- e) **ACCU-CHEK COMPASS** (Reg. No. 2,681,644, issued January 28, 2003) for computer software for maintaining a database of blood test results from a blood glucose monitor for use by individuals with diabetes in Class 9. First use date is March 16, 2001.
- f) **ACCU-CHEK ACTIVE** (Reg. No. 2,703,048, issued April 1, 2003) for diagnostic test strips for determining levels of glucose in blood; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips, all sold over-the-counter to consumers for medical diagnostic use in Class 5; and blood glucose monitor; and a blood glucose monitoring kit consisting of a blood glucose monitor,

diagnostic test strips, lancets and control solutions, all sold over-the-counter to consumers for medical diagnostics in Class 10. First use date is August 8, 2001.

- g) **ACCU-CHEK INFORM** (Reg. No. 2,732,629, issued July 1, 2003) for blood glucose monitor with data management capabilities in Class 10. First use date is April 30, 2001.
- h) **ACCU-CHEK** (Reg. No. 3,016,330, issued November 15, 2005) for Online retail store services, featuring products for use in diabetes management; administration of a discount and rebate program for enabling participants to obtain discounts and rebates on products for use in diabetes management in Class 35. First use date is November 1, 2004.
- i) **ACCU-CHEK AVIVA** (Reg. No. 3,071,846, issued March 21, 2006) for Diagnostic test strips for determining levels of glucose in blood; and control solutions used for quality checks on blood glucose monitors and diagnostic test strips all for medical diagnostic use in Class 5 and Blood glucose monitors; and blood glucose monitoring kits consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions all for medical diagnostic use in Class 10. First use date is January 20, 2005.
- j) **ACCU-CHEK** (Reg. No. 3,076,905, issued April 4, 2006) for Instruments, devices and apparatus for medical, surgical and veterinary purposes, namely, blood glucose meters, disposable infusion sets, lancets and insulin pumps and accessories therefor, namely, catheters, pen needles, syringes and patches in Class 10 and Medical services in the field of diabetes; health care consultancy in the field of diabetes in Class 44.

- k) **ACCU-CHEK MULTICLIX** (Reg. No. 3,127,170, issued August 8, 2006) for Lancet devices and lancets for obtaining blood in Class 10.
- l) **ACCU-CHEK SPIRIT** (Reg. No. 3,194,287, issued January 2, 2007) for Insulin pumps and accessories thereof, namely, catheters, infusion sets and tubing, pen needles, syringes, adapters, ampoules, batteries, filling devices used for filling ampoules for insulin pumps with insulin, sterile dressings and carrying cases in Class 10.
- m) **ACCU-CHEK TENDER** (Reg. No. 3,199,675, issued January 16, 2007) for Medical instruments and apparatuses, namely, catheters and infusion sets and accessories thereof, namely, adapters and ampoules, all for the subcutaneous administration of drugs in Class 10. The date of first use is July 26, 2005.
- n) **ACCU-CHEK LINKASSIST** (Reg. No. 3,202,402, issued January 23, 2007) for Medical instruments, namely, insertion tools for the insertion of needles and infusion sets all for the subcutaneous administration of insulin in Class 10.
- o) **ACCU-CHEK PERFORMA** (Reg. No. 3,223,375, issued March 27, 2007) for Diagnostic test strips for determining the levels of glucose in blood; control solutions used for quality checks on blood glucose monitors and diagnostic test strips, all for use by individuals with diabetes for medical diagnostic purposes and for use by hospitals in Class 5; Blood glucose monitors, blood glucose monitoring kit consisting of a blood glucose monitor, diagnostic test strips, lancets and control solutions, all for use by individuals with diabetes for medical diagnostic purposes and for use by hospitals in Class 10.

- p) **ACCU-CHEK 360** (Reg. No. 3,256,740, issued June 26, 2007) for Computer hardware and computer software for evaluation, verification and administration, of medical data; computer software for medical and diagnostic purposes, namely, for use in transferring data from blood glucose monitors or insulin pumps to electronic data management systems such as personal computers, electronic diaries, interfaces, modems and cables for clinical use in Class 9.
- q) **ACCU-CHEK CONNECT U** (Reg. No. 3,348,704, issued December 4, 2007) for Educational services, namely, on-line workshops, on-line seminars and on-line classes relating to health and medical information about monitoring diabetes, management of diabetes and use of meter devices, insulin pumps and accessories for use therefor in Class 41.
- r) **ACCU-CHEK SMART PIX** (Reg. No. 3,411,797, issued April 15, 2008) for Electronic apparatus for recording, transmission and presentation of medical data, namely, electronic readers for blood glucose meters and insulin pumps; software for medical purposes, namely, for formatting, viewing and transmitting medical data collected and stored on blood glucose meters and insulin pumps to a personal computer and vice versa in Class 9.

3. Opposers have, for a number of years, used and promoted the **ACCU-CHEK** marks in connection with medical instruments and apparatus, and other products and services related to blood glucose monitoring and diabetes management and education. Opposers' use of certain of its **ACCU-CHEK** marks is earlier than any date of first use that may be relied upon by Applicant for its **CLEVER CHEK** marks in connection with any of the items listed in its applications.

4. Opposer RDG's application filing dates and first use dates (if relevant) for each of its above-listed **ACCU-CHEK** mark registrations predate the filing dates for both of Applicant's applications. Therefore, Opposers' **ACCU-CHEK** marks are senior to both of Applicant's **CLEVER CHEK** marks.

5. Based on Opposers' long-standing and consistent use of the **ACCU-CHEK** marks, coupled with the considerable time, effort and money that Opposers have spent on advertising and promoting the **ACCU-CHEK** marks, the public and trade recognize the **ACCU-CHEK** marks as being associated with Opposers and the **ACCU-CHEK** marks have become well-known and famous.

6. As a result of the fame of Opposers' **ACCU-CHEK** marks, the **-CHEK** component of Opposers' **ACCU-CHEK** marks has acquired distinctiveness in its own right when that **-CHEK** component is used in connection with products and services related to blood glucose monitoring and diabetes management and education.

7. On information and belief, Applicant intends to use the **CLEVER CHEK MASTER YOUR LIFE** mark (Serial No. 77/012870) in connection with Medical diagnostic test strips for use in the field of measuring of blood glucose, blood uric acid, blood cholesterol, the level of chemicals in the urine, the level of biologicals in urine, pesticide concentration in liquid and pH value in liquid in Class 5; and Apparatus for blood analysis; Apparatus for clinical diagnosis; Blood glucose meter; Blood pressure measuring apparatus; Blood testing apparatus; Body-fat monitors; Electrocardiographs; Heartbeat measuring apparatus; Nebulizers for respiration therapy; Oxygen monitors; Thermometers for medical purposes in Class 10. In this Notice of Opposition, Opposers are opposing the registration of the **CLEVER CHEK MASTER YOUR LIFE** mark (Serial No. 77/012870) only with respect to the following goods:

“Medical diagnostic test strips for use in the field of measuring blood glucose” in Class 5, and the “Apparatus for blood analysis; Apparatus for clinical diagnosis; Blood glucose meter” and “Blood testing apparatus” in Class 10. These specified goods are competitive with the products and services offered and sold by Opposers under the **ACCU-CHEK** marks and are likely to be purchased and used by the same class of purchasers targeted by Applicant.

8. On information and belief, Applicant intends to use the **CLEVER CHEK AUTO CODE** mark (Serial No. 77/217457) in connection with Medical diagnostic test strips for use in the field of measuring of blood glucose, blood uric acid, blood cholesterol, the level of chemicals in the urine, the level of biologicals in urine, pesticide concentration in liquid and pH value in liquid in Class 5; and Apparatus for blood analysis; Apparatus for clinical diagnosis; Blood glucose meter; Blood pressure measuring apparatus; Blood testing apparatus; Body-fat monitors; Electrocardiographs; Heartbeat measuring apparatus; Nebulizers for respiration therapy; Oxygen monitors; Thermometers for medical purposes in Class 10. In this Notice of Opposition, Opposers are opposing the registration of the **CLEVER CHEK AUTO CODE** mark (Serial No. 77/217457) only with respect to the following goods: “Medical diagnostic test strips for use in the field of measuring blood glucose” in Class 5, and the “Apparatus for blood analysis; Apparatus for clinical diagnosis; Blood glucose meter” and “Blood testing apparatus” in Class 10. These specified goods are competitive with the products and services offered and sold by Opposers under the **ACCU-CHEK** marks and are likely to be purchased and used by the same class of purchasers targeted by Applicant.

9. On information and belief, Applicant was aware of Opposers’ **ACCU-CHEK** marks and trademark registrations prior to selecting, adopting and filing applications to register its **CLEVER CHEK** marks.

10. Because Applicant's **CLEVER CHEK** marks contain the term **CHEK**, which has acquired distinctiveness as it relates to Opposers' products and services related to blood glucose monitoring and diabetes management and education, Applicant's **CLEVER CHEK** marks as used in connection with the contested goods are so confusingly similar in appearance, sound, meaning and commercial impression to Opposers' **ACCU-CHEK** marks, which the public and trade already recognize and associate with Opposers, so as to cause confusion, to cause mistake or to deceive purchasers as to the source of Applicant's goods, or to affiliation, connection or sponsorship between Opposers and Applicant.

11. If Applicant were permitted to use and register its **CLEVER CHEK** marks for the goods specified in this opposition, confusion among consumers resulting in damage and injury to Opposers would be caused by virtue of the related nature of the goods covered by the **CLEVER CHEK** marks.

12. Opposers have expended considerable time, effort and money in advertising and otherwise promoting the **ACCU-CHEK** marks and in encouraging the public and trade to recognize the **ACCU-CHEK** marks that unless refused, the registrations obtained by Applicant would enable Applicant to reap the benefits of the goodwill attached to Opposers' **ACCU-CHEK** marks, and Opposers will suffer irreparable damage and injury as a result of the confusion that is likely to arise.

13. Any defect, objection or fault found with any products provided by Applicant under the **CLEVER CHEK** marks would necessarily reflect on and seriously injure the high quality reputation that Applicant has established and currently enjoys under its **ACCU-CHEK** marks.

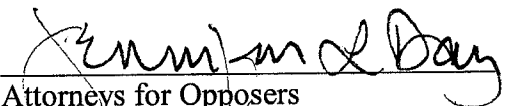
14. Opposers' overall **ACCU-CHEK** marks are famous, well-known marks, and Opposers' **-CHEK** component has acquired distinctiveness when used in connection with products and services related to blood glucose monitoring and diabetes management and education. Therefore, Applicant's use and registration of the **CLEVER CHEK** marks are likely to dilute the value of Opposers' **ACCU-CHEK** marks.

Wherefore, Opposers pray that Application Serial No. 77/012870 and Application Serial No. 77/217457 be rejected, that no registrations be issued thereon to Applicant, and that this consolidated opposition be sustained in favor of Opposers.

Opposers appoint Amy L. Cueller, Jennifer L. Day, Megan M. Mulford and James A. Coles, along with the law firm of Bose McKinney & Evans LLP, to transact all business on its behalf in connection with this opposition proceeding.

Respectfully submitted,

June 12, 2008

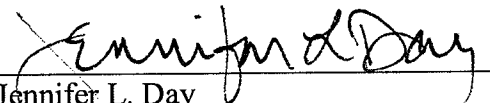

Attorneys for Opposers
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mmulford@boselaw.com

Certificate of Service

The undersigned, attorney for Opposers, hereby certified that she served by First Class Mail, a true and correct copy of the Consolidated Notice of Opposition upon the following on this 12th day of June, 2008:

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